

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re WEST/KINNEY Minors

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ALEXANDRIA WEST and TRACIE KINNEY,

Appellees,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TRENT VINCENT,

Respondent-Appellant.

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UNPUBLISHED

February 4, 2010

No. 293269

Mackinac Circuit Court

Family Division

LC No. 2009-005972-NA

Before: Talbot, P.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Non-parent respondent Trent Vincent appeals by right from the trial court order granting temporary custody of the two minor children to the Department of Human Services (DHS) for care and supervision, with living arrangements at the home of the children's natural father. The trial court further granted supervised parenting time with the children's mother and denied Vincent any contact with either of the minor children until ordered by the court. We affirm.

I. Basic Facts And Procedural History

According to the minor children's grandmother, in April 2009, she made arrangements with the children's mother to pick them up and take them home with her for an extended visit. Upon seeing the children, the grandmother noticed that the younger of the two girls was thinner looking, that she had a slightly unusual disposition, and that she was somewhat clingy.

During dinner later that evening, the grandmother noticed that the younger child had bruising on her face that resembled a handprint. The grandmother then also noticed other marks on the younger child's face, including a red mark by her ear and a mark on her neck. The children's grandfather corroborated the grandmother's observations. The grandfather indicated

that the younger child had noticeable bruising, had lost weight, and was dirty. After discussing the bruising with other family members, the decision was made to take the child to the doctor the following morning.

Later that evening, during bath time, the grandmother also saw that the younger child had considerable bruising on her butt and genital area. The older child said that her sister had “boo-boos” from when Vincent spanked her. After seeing this additional bruising, the grandparents took the younger child to the emergency room that same evening. The emergency room doctor indicated that he saw multiple stages of bruising on greater than 70 percent of the child’s buttocks. The child also had bruising in her vaginal area. Based on his examination, the doctor concluded that the injuries were not the result of an accident, but instead opined that the injuries were the result of a battery. A police officer was called to the hospital that evening to take pictures of the child and to investigate suspected child abuse.

After the situation was investigated, DHS filed a petition with the trial court, requesting that the court take jurisdiction over the minor children under MCL 712A.2. And after hearing all evidence, the jury found that one or more of the statutory grounds alleged in the petition concerning the minor children had been proven. Vincent now appeals.

## II. Child-Protective Proceedings Petition

### A. Standard Of Review

Vincent argues that the trial court erred in allowing the jury to be instructed regarding specific provisions of the juvenile code<sup>1</sup> and on “allegations” that were not included in the original petition. Vincent contends that the petition filed in this case only made specific allegations of physical trauma inflicted by himself and did not allege that the children’s mother neglected or failed to protect her children. Therefore, he argues, the trial court should not have instructed the jury on MCL 712A.2(b)(1) relating to parental failure to protect and support. Whether proper procedure was followed in a child-protective proceeding is a question of law that this Court reviews de novo.<sup>2</sup> This Court also reviews de novo issues of statutory interpretation.<sup>3</sup>

### B. MCL 712A.2(b)(1)

A request for court action to protect a child must be in the form of a petition.<sup>4</sup> The petition must contain information about the minor children, as well as the essential facts that

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<sup>1</sup> MCL 712A.1 *et seq.*

<sup>2</sup> *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2001).

<sup>3</sup> *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

<sup>4</sup> MCR 3.961(A).

constitute an offense against the child under the juvenile code.<sup>5</sup> The petition must include a citation to the section of the juvenile code relied on for jurisdiction.<sup>6</sup>

MCL 712A.2(b) provides the family division of the circuit court with jurisdiction over a juvenile younger than 18 years of age in certain circumstances. The two circumstances in question here are: (1) when a parent neglects or refuses to provide proper or necessary support or care for the child;<sup>7</sup> and (2) when a child is living in a home that is unfit based on the neglect or cruelty of a parent, guardian, or non-parent adult.<sup>8</sup>

As stated, Vincent contends that the petition allegations did not contain language that the children's mother failed to protect them, and therefore this question should not have been posed to the jury and the jury should not have been instructed with MCL 712A.2(b)(1). However, contrary to Vincent's assertion, the petition does indicate such allegations. Specifically, the petition alleged that: (1) the older child indicated that both she and her younger sister were spanked "on different dates, at different times and at multiple locations" when Vincent was angry; (2) the older child indicated that her mother was present when Vincent inflicted the injuries; and (3) a doctor who had examined the younger child indicated that he found "different stages of bruising." It is reasonable to read these allegations as indicating that the children's mother was aware of the multiple spankings. Indeed, the mother told the children's grandmother that the younger child's increased bruising was the result of an "increase in falling." And the mother's admonition to Vincent "not to do this any more" was both ineffective and evidenced a serious lack of adequate protection.

Additionally, the petition specifically stated that remaining in the home was contrary to the welfare of the minor children for the following reasons:

Due to the severe physical abuse of [the younger child] by mother's boyfriend, [Vincent], *and the failure to protect by [the mother]*, it is contrary to the children's welfare to remain in her home. The Department of Human Services requests that removal from the mother's home be granted at this time. It is the Department's recommendation the children remain in the physical custody of their father[.]<sup>[9]</sup>

That this specific language is not set forth on the "Allegations" page is not dispositive. MCR 3.902, which relates to proceedings involving juveniles, indicates that "the rules are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties." Further, the rules must be interpreted

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<sup>5</sup> MCR 3.961(B)(1), (3).

<sup>6</sup> MCR 3.961(B)(4).

<sup>7</sup> MCL 712A.2(b)(1).

<sup>8</sup> MCL 712A.2(b)(2).

<sup>9</sup> Emphasis added.

and applied to ensure that each minor coming within the jurisdiction of the court receives the care, guidance, and control, preferably in the minor's own home, that is conducive to the minor's welfare and the best interests of the public.<sup>10</sup> To construe MCR 3.961(B)(3) and (4) to require that a direct statement on the failure to protect such as quoted above must be included on the "Allegations" page of a petition would not comport with fairness, flexibility, and simplicity as required by MCR 3.902.

We conclude that the statements made under the "Allegations" section of the preprinted petition form, as well as those statements found elsewhere in the three-page document, outlined "the essential facts that constitute an offense against the child under the Juvenile Code" as required by MCR 3.961(B)(3).

### C. Reference To Specific Juvenile Code Section

Vincent also contends that DHS erred in failing to include the specific statutory subsection of MCL 712A.2 in the petition. MCR 3.961(B)(4) requires a petition to contain reference to the *section* of the juvenile code, but it does not require the specific *subsection* to be listed.<sup>11</sup> Listing only MCL 712A.2, without further elaboration of the subsection, is consistent with "secur[ing] fairness, flexibility, and simplicity."

Moreover, the petition as a whole implicates both subsections of the statute. Here, the trial court did not obtain jurisdiction until the jury determined by a preponderance of the evidence that the allegations in the petition established that the minor children came within the statutory requirements of MCL 712A.2(b).<sup>12</sup> The jury could have found that the trial court had jurisdiction based on any one of the statutory subsections of MCL 712A.2, and there was no need for elaboration on which of these statutory subsections was proven.<sup>13</sup> The jury has the unique opportunity to observe the witnesses to determine the credibility and weight to be given to trial testimony.<sup>14</sup>

## III. Due Process

### A. Standard Of Review

Vincent argues that the trial court's submission of the case to the jury on grounds other than those included in the original petition violated Vincent's due process rights and fundamental

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<sup>10</sup> MCR 3.902(B).

<sup>11</sup> See MCR 3.902(B).

<sup>12</sup> See *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993).

<sup>13</sup> See MCR 3.972(E).

<sup>14</sup> *Moore v Detroit Entertainment LLC*, 279 Mich App 195, 202; 755 NW2d 686 (2008).

liberty interests. We disagree. Whether a child protective proceeding complied with a Vincent's right to due process is a constitutional issue that this Court reviews de novo.<sup>15</sup>

## B. Analysis

Vincent contends that he was denied his right to present evidence and prepare his case in a meaningful way. To comport with procedural due process, a respondent must be given notice and the opportunity to be heard.<sup>16</sup> Although the petition did not state the specific subsection that it was being brought under, the language in the petition provided Vincent with sufficient notice that the DHS was seeking court jurisdiction based on (1) severe physical abuse and (2) the failure to protect. Also, the petition allegations stated that Vincent harmed the younger child when he was angry and that the children's mother was present when this occurred. Based on the totality of the information in the petition, Vincent had notice that court jurisdiction was being requested under MCL 712A.2(b) and information that the proofs at trial would involve both abuse and failure to protect allegations. Furthermore, the transcript of the jury trial clearly indicates that Vincent was given the opportunity to be heard. To the extent that Vincent asserts that the children's mother was denied her due process rights, he does not have standing to raise this issue on her behalf.<sup>17</sup>

Finally, while parents have a fundamental liberty interest in the companionship, care, custody, and management of their children,<sup>18</sup> Vincent is not a natural parent, or a parent in any respect, to either of the minor children, and therefore he does not have a fundamental liberty in relation to these children.

Affirmed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Donald S. Owens

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<sup>15</sup> *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009).

<sup>16</sup> *Id.* at 92.

<sup>17</sup> See *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000).

<sup>18</sup> *In re B & J, Minors*, 279 Mich App 12, 23; 756 NW2d 234 (2008).